

**TOWN OF CONCORD
SELECT BOARD
AGENDA
APRIL 23, 2020
4:00PM
CONFERENCE CALL**

1.	Call to Order
2.	Town Manager Update
3.	Earth Day 50 th Anniversary Proclamation
4.	Approve a 60-day Extension for Tour Guide Licenses
5.	Moderator's Declaration
6.	Miscellaneous Correspondence
7.	Adjourn

To: The Concord Select Board
From: ConcordCAN! and Mothers Out Front

April 14th, 2020

As our Commonwealth and Nation confront the coronavirus emergency currently wreaking havoc on both our public health and our economy, ConcordCAN and Mothers Out Front recognize and appreciate the courage and dedication of our local and state leaders as well as front-line citizens. The crisis we face, while unprecedented in our lifetimes, arises from a menace predicted by experts. Indeed, we see glaring parallels between the COVID19 pandemic and the worsening climate crisis, including a failure of leadership at high levels to take science into account while facing such a difficult challenge.

We arrive at a noteworthy anniversary: fifty years ago, on April 22, 1970, the first Earth Day brought out nearly ten percent of Americans demonstrating for a healthy, sustainable environment. Precipitating the event were mounting tragedies such as the Santa Barbara oil spill and the burning Cuyahoga River that led to the growing realization that the fate of our precious planet, no longer infinite, could not be taken for granted. National leadership in those times responded by bringing forward the National Environmental Policy Act, the Clean Air and Clean Water Acts, and the creation of the Environmental Protection Agency. It is a sad state of affairs that fifty years later these are all under threat from a presidential administration which does not recognize the value of our shared prosperity over short-term profit.

We urge that you take the opportunity now to commemorate and proclaim Earth Week 2020, which we hope will bring a reawakening of environmental consciousness and the empowerment of a generation to face the threats of changing climate and environmental degradation. While regrettably cooped up in our homes, let us all take time to recognize how fortunate we are to live on this amazingly wonderful planet. In the spirit of the original Earth Day, we call your attention to Earth Day Live (EarthDayLive2020.org), an online mobilization calling for bold action to address the important challenges we face, and ask you to help announce and promote this event to our fellow citizens.

Sincerely yours,

The ConcordCAN Steering Group: Bob Andrews, Susan Frey, Brad Hubbard-Nelson, Berni Jenkins, Bob Lawson, Janet Lawson, Garret Whitney, Mary White and Kati Winchell

ConcordCAN! - the Concord Climate Action Network, is a grass-roots group dedicated to addressing the climate emergency through education and advocacy towards environmentally sustainable policies and behaviors. It is a chapter of MCAN, the Massachusetts Climate Action Network.

Mothers Out Front Concord Leadership Team: Laura Davis, Bouzha Cookman, Hewon Hwang, Melanie Coe, Gilda Gussin, Carolyn Wilkins and Linda Neiman

We are determined mothers, grandmothers and others raising our collective voices to provide a healthy environment and livable climate for our children. Mothers out Front has 24,000 members nationwide.

**PROCLAMATION
EARTH WEEK
APRIL 19-25, 2020**

- Whereas,** in this unprecedented time of a pandemic and economic upheaval, as we keep close to our hearts and minds the deep pain and suffering of those who are ill or who have lost loved ones, the sacrifices of all health care, public service, and other essential workers, and the devotion of individuals and families taking care of each other, we pause and also recognize the caring tradition of Earth Week.
- Whereas,** This year is the fiftieth anniversary of the first Earth Day, when millions of Americans called for environmental protection and a new way forward for our planet;
- Whereas,** and in the years since, Concord government, organizations, residents, and businesses have celebrated and echoed this call to action;
- Whereas,** we are all stewards and beneficiaries of the Earth, and its healthy and diverse ecosystem is vital to a thriving community, a vigorous local economy, and a sustainable environment; and
- Whereas,** we must use creativity, innovation, and education to solve these problems, with local communities leading the way; and
- Whereas,** Earth Week offers Concord a unique opportunity to make, renew, and celebrate commitments that will protect quality of life and the Earth for generations to come.

NOW, THEREFORE, be it resolved that we, the Concord Select Board, do hereby proclaim **April 19-25, 2020**, to be:

EARTH WEEK

in Concord, Massachusetts, and urge all residents to reflect on how to contribute to a healthy, sustainable environment and take action to make Concord an even better place to live, work, and raise a family.

April 9, 2020

Town Manager Crane,

Our neighbor, co-defendant, and co-path owner, Neil Rasmussen relayed to us that you did not wish to speak with us when Neil suggested you call us yesterday. Neil also told us that you hoped that Neil would act as an intermediary between you and us regarding our decision to close our side of the path on our private property. Neil is not our legal representative. He does not hold power of attorney for us.

We wish to clarify our decision to revoke permission of public access over our unencumbered private property. If you have any document that legally demonstrates an encumbrance, please produce it, otherwise this is purely a letter out of courtesy to clarify our decision.

You are likely aware of the fire on Fairhaven Hill Road that completely burnt to the ground an old historic home. Like that neighborhood, we have no town water and no fire hydrants on our street. Neil Rasmussen confirmed with the Fire Chief that our property faces the same firefighting risks as the home on Fairhaven Hill Road. We have documented to the town on many occasions over the years that we have found lit cigarettes on the ground, and that this is a fire hazard. With the increased number of people over our private property since the rise of COVID-19, we have continued to find small smoldering fire remnants from discarded lit cigarettes. The fire risk here is significant and the town has done nothing to reduce it.

You are likely aware from your discussion with the Rasmussens that Neil was attacked and rather severely bitten by an off-leash dog on his private property earlier this month.

You are likely aware that due to COVID-19, aberrantly large numbers of people have been accessing our private property while we continued to still welcome them - indeed, there was a very sharp increase in calls for police assistance regarding parking violations as well as animal control issues.

Almost no one was practicing "social distancing" by our homes. Almost no one was wearing masks.

Our safety, our property, and our health have become severely threatened by the reckless and negligent activities of certain trail users, and therefore justifies a change from our long-standing willingness to keep our property open. As you know, and as your predecessor Mr. Whelan acknowledged in his deposition, we have generously welcomed people onto our trail, notwithstanding the town's ill-considered ploy of attempting to bully us into granting an easement to the Town where none exists, despite the slander, libel and blatantly false and defamatory statements made about us and our property by town officials, those related to town officials either by marriage or by business relationship, as well as by illegal executive session planning. So far, the Attorney General has found in our favor on 3 of the first 3 OML complaints we filed against the town.

Approximately 5 years ago, when we asked the town for assistance to manage the public for the safety of all involved, the town chose to make false and defamatory statements about us and sue us instead of working cooperatively to assist us to manage the situation.

We understand that when you called the Rasmussens, they suggested a cooperative solution, whereas you wanted them to document a fictitious plea for assistance to manage the dramatically increased public usage and abuse of the previously available private path which was resulting in significantly increased risk to our families, our homes, and our properties. We understand that once again the town, specifically you, have chosen not to support the Rasmussens in their suggestion of a cooperative solution, and instead have increased their vulnerability as well as our vulnerability to all sorts of harm, by declining to support their cooperative solution to the management of the parking area that the Rasmussens created and maintained.

The false and defamatory information that the town has refused to address, and indeed, that some town officials seem to continue to promote on social media and to the Concord Journal, fuel the public's discontent. It is unfortunate that the town is either unwilling or unable to distance itself from a cabal of insiders to evaluate the facts.

The town has repeatedly subjected us to harm, when we have asked for assistance. You allege a right of way which you cannot prove with any documentation. The situation is now literally, deadly serious with COVID-19, fire, and being attacked by animals. All of this has been copiously documented. For all these reasons, we will continue to actively assert our private property rights, and defend ourselves, our health, our home, and our land.

The town does not, has never, and will not control our private property until the courts say otherwise. Allege what you will, but you have proven nothing.

We consider any encroachment by the town onto our private property to be a violation of our civil rights, and we will treat it as such. We informed the police of that as well. We will also hold any trespassers on our property legally accountable.

Susannah Kay, MD
Brooks S. Read
366 Estabrook Road

From: Elizabeth Morrison <lizmorrison63@gmail.com>

Date: Thursday, April 16, 2020 at 3:46 PM

To: Michael Lawson <mlawson@concordma.gov>, Concord Public Info
<publicinfo@concordma.gov>

Subject: Re: Estabrook Woods access

Dear Michael and Select Board Members,

I am writing with regard to maintaining public access to Estabrook Woods. At a time when people should be coming together to deal with the pandemic that is occurring across the world, it feels terrible to have some landowners who abut Estabrook Woods attempting to seal off the entrance and prohibit the public from walking there.

The right of way for public walking through the Estabrook Woods has been established for decades. This is a precedent set a century or more ago and it is not right for private landowners to try and take away this right of public access, especially through underhanded methods such as fake official signs and chicken wired gates.

Furthermore, mental health issues, anxiety and depression are skyrocketing in this frightening and uncertain time, and communing with nature and exercise outdoors is one of the few solaces available to people.

I hope you will do all possible to keep the Estabrook entrance accessible to the public.

Respectfully,

Liz Morrison

63 Monument Street

On 4/17/20, 12:00 AM, "Maude Bigelow" <mmbigelow@me.com> wrote:

It seems wicked at this time to cut off access to walking in the woods when we are confined to our homes. Please allow lawful access to the wilderness which these people do not OWN. Please do this immediately. UNLOCK THE GATE IMMEDIATELY.

Thank you.

Sent from my iPhone

From: Ellen Emerson <ellen.emerson@yahoo.com>

Date: Saturday, April 18, 2020 at 9:54 AM

To: Susan Bates <sbates@concordma.gov>, Michael Lawson <mlawson@concordma.gov>, Linda Escobedo <lescobedo@concordma.gov>, Jane Hotchkiss <jhotchkiss@concordma.gov>, Terri Ackerman <tackerman@concordma.gov>, Stephen Crane <scrane@concordma.gov>

Subject: Private cf. public land in Estabrook Woods

Dear Members of the Select Board and Town Manager,

We respectfully request the Town to take immediate action to publicize the fact that there is no Town land, no public land, at the end of Estabrook Road.

The land at the end of Estabrook Road is private land. False statements to the contrary have led to abusive behavior toward the landowners from members of the public. We ask the Town to reassert the truth.

The facts below are of public record and undisputed. They need to be publicized by the Town to dispel falsehoods concerning the Estabrook Woods. These are not 'legal points' requiring Town counsel advice.

1. The Town owns 115 acres of conservation land on the eastern side of the Estabrook Woods. Those 115 acres of conservation land encompass land at Monument Farm and at Punkatasset. The trails on those 115 acres of land have deeded public easements allowing use by the public.
2. The Town's 115 acres of land are the only land within the Estabrook Woods that are owned and managed by the Town of Concord. All the rest of the land in the woods is private.
3. There are six access points to the Estabrook Woods open to the public by right. These access points are at Monument Farm, Punkatasset, Kibbe Place, Malcom Preserve, Chamberlin Woods and Prospect Street.
4. There are some trails on the private land in the Estabrook Woods which have deeded public easements over them, allowing use of those trails by the public. Any public use of those trails is subject to any limitations and rules imposed by the landowner. The land at the end of Estabrook Road is private land with no deeded public easement allowing use over the land by the public.

A statement from the Town is necessary to make it clear to the public that the trail at the end of the Estabrook Road is on private land and, unless and until

proved otherwise through the courts, is lawfully under the control and management of its private landowners.

Thank you for your attention to this letter.

Ellen Emerson
Bruce Kohler
1061 Monument Street

From: Elizabeth Goldsmith <lizgo@comcast.net>
Date: Monday, April 20, 2020 at 11:37 AM
To: Michael Lawson <mlawson@concordma.gov>, Stephen Crane
<scrane@concordma.gov>
Subject: Estabrook Trail

Dear Michael Lawson and Stephen Crane,

There was a post on Concord Unleashed's Facebook page that encouraged people to write to you over their concerns about the Estabrook Trail. I am reaching out to you for that reason.

The time for the Town of Concord to step up and set the record **straight** is long overdue: the land at the end of Estabrook Road is private. There has been ample and indisputable testimony to this fact. As such, the landowners have every right to control access, and visitors to Estabrook Road should not be allowed to trespass on the land or insult, berate and threaten landowners (and taxpayers) without consequences. This is especially important now, when COVID-19 concerns suggest that physical distancing and wearing masks is essential to prevent the spread of the coronavirus. The landowners must protect their personal health in the face of a large influx of walkers, runners and cyclists and should be able to do so without fear of retribution.

Over the past couple of years, I've regularly seen Concord Unleashed members post about how they are flagrantly ignoring regulations by walking their dogs off leash at Punkatasset or on the Estabrook Trail. This despite the fact that people have been attacked off leash dogs (I am one of them). They suggest the best time to avoid the rangers, and encourage dog walkers to fill out forms that document when and where they walk off leash. Then they have posted that data. Seriously, many of us have curtailed our own activities in respect for the landowners, yet when Concord Unleashed, in the person of Michael Dettelbach, presents a full recounting of when and how people have broken the laws, nothing is done. No wonder that recently, members of this Facebook group have encouraged people to scale the gate at the end of Estabrook Road effectively promoting and encouraging trespassing. They also post inflammatory and hostile comments about the landowners and perpetuate untruths. If you choose to post inconvenient points of view on Concord Unleashed, they ban you from their page.

Yesterday I watched four teenaged girls walk down the "closed" path, climb over the Rasmussen's stone wall and take photos of the signs. None of them were wearing masks.

The Town of Concord can – and must -- put a stop to this by clearly stating the facts. Even on the Concord Unleashed page, Jaime Webster wrote: "A problem here is a lack of official Concord presence on social media to mediate our confusions." She is correct. By not weighing in, the Town has contributed to the confusion surrounding the lawsuit and left the landowners in Estabrook Woods under siege.

The attitude of entitlement of the members of Concord Unleashed is stunning, but can partially be understood because so many people still do not understand that the land in contention is privately held. The lack of action from the Town of Concord to remedy the lies and untruths is mind boggling. By staying silent about the truth, and allowing individuals to flaunt regulations and common decency, the Town has encouraged their bad behavior and let town residents and taxpayers know that private property is not respected in Concord.

Regards,

Elizabeth Goldsmith

Note: While I do not live in Concord, my husband's business is located in the Town. At times we have thought to moving to Concord but the lack of respect for landowners and the ridiculous amount of money spent on the frivolous lawsuit has convinced us that the Town does not value its residents.

Select Board
Michael Lawson, Chair

I am writing to inquire why Dr. Kay's letter was not included in the group of letters that were presented to the public on the Town's website and I specifically request that it be included. It is attached hereto. The presentation of only one side of this issue needs to stop.

A comment that was made by a lawyer subsequent to the Special Town Meeting and the Estabrook discussion last summer was "I have never seen so many people who have not a clue what they are talking about". That could be said for the myriad of letters submitted at the last meeting. And you, as a select board, have failed to present the ongoing litigation fairly.

As a family who has owned land here on the **EDGE** of Estabrook Woods for over 100 years, it is time for you to reiterate that the land and the trail are owned by the landowners. That the Town sued the landowners thinking they had an easement and because they did, the burden of proof is on the Town fathers to prove they hold a documented easement across the land.

Your continued failure to do this has been creating civil unrest. And I personally lay this ongoing costly lawsuit directly at the feet of Chris Whelan and you, Michael Lawson and Jane Hotchkiss...for not doing your homework, for filing a suit with no documents to back you up, for abdicating your fiduciary responsibility to a litigation lawyer, for bowing to the will of militant dog owners and for tearing this town apart.

Dan Monahan, superintendent of the Concord NRC for 30 years made a comment in his oral history at the library. He remarked that the purchase of the Punkatasset land was extremely important because it was the gateway to Harvard's Estabrook Woods. What have you all done? Ignore it while pursuing a lawsuit that began with the Town Counsel using the wrong statute under which Estabrook road was abandoned.

I have great sympathy for the Read/Kays because more than any other landowner, this trail problem is occurring right in their front yard. It is devaluing their land, it is dangerous, and it is unwarranted. And if any of

the public thinks they know better about Covid 19 than a doctor in the trenches with ICUs full of patients, they haven't any brains. I challenge any of you to say you would be so accommodating to the public if it was your land, your family, and your financial resources being destroyed.

We learned through "discovery" that the memorandum of agreement presented to the Town by Neil Rasmussen was never forwarded to the Select Board. Chris Whelan and the Town Counsel made that decision. Exactly WHO is running this town? The Board ended up signing an agreement with Harvard for less than what was offered by Neil. And the Harvard agreement gave you less than you already had. In what universe is this justified as progress!

Attached are just a few photos of your wonderful model citizens in action on our private property. We have not seen the likes of this in the last 100 years of family ownership. We thank you as my husband turns 83. You have managed to destroy his belief that we live in a Town with any ethics whatsoever.

Leslee W Robb
Pippin Tree Farm
Concord



2019/12/16
08:28:14



2020/01/19
17:14:58



2020/03/18
17:00:00



2019/02/09
18:48:55



2020/04/04
14:07:14





2020/04/07
15:00:10

From: Dudley Goar <dudleygoar@icloud.com>
Date: April 23, 2020 at 7:45:05 AM EDT
To: Jane Hotchkiss <jhotchkiss@concordma.gov>
Subject: Re: Contact

Jane, I wanted to remind the Select Board that the courts are open now for emergency business. With respect to the unilateral closure of the Estabrook Road entrance to Estabrook Woods by abutters, the town can and should seek a restraining order followed by a preliminary injunction keeping the entrance open. Based on what I know about the arguments on both sides, I think the town has a good chance of succeeding.